

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Dig Safe Notice No. 630

In Re Chester Construction, Alleged Violation of                     )  
July 24, 2009, as reported by Comcast                                     )

Order entered: 4/8/2011

**ORDER RE: NOTICE OF PROBABLE VIOLATION**

**Background**

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to Chester Construction ("Respondent").
2. Incident Date: July 24, 2009
3. Incident Location: Farwell Lane, Dorset, VT
4. Name and Address of Company that Reported the Incident to the Department: Comcast, 676 Island Pond Road, Manchester, NH 03109
5. Date Incident Reported to Effected Utility: July 24, 2009
6. Date NOPV issued by Department: September 25, 2009 (#1660)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 7/24/09, Chester Construction was excavating to install a septic system at this site. Chester Construction did not notify the one call center prior to excavating. During the course of the excavation, an unmarked Comcast distribution cable was damaged, causing a loss of service to 2 subscribers for 2 hours. The site was not marked out because no notification was made to the one call system prior to excavating. Chester Construction notified Comcast of the damaged facility. The Department of Public Service issued 0 Notices of Probable Violation (NOPV's) to Chester Construction during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Five Hundred Dollars (\$500.00), and attendance at a Department-approved underground damage prevention seminar.
10. The NOPV, along with instructions concerning how to respond to the NOPV, was sent to Chester Construction on September 25, 2009.<sup>1</sup> To date, Chester Construction has not filed a response to the NOPV.

### **Conclusion and Order**

Public Service Board ("Board") Rule 3.807(C) provides:

Within 30 days of receipt of a Notice of Probable Violation, any person who is the subject of an enforcement proceeding pursuant to that Notice shall make a written response to the Department and to the Board, with a copy to the Company that reported the alleged violation.

Accordingly, we conclude that it is appropriate to make a binding disposition of this matter *by default*, pursuant to 3 V.S.A. Section 809(d).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Within thirty days of the date of this Order, Chester Construction shall pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and
2. Chester Construction shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

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1. Letter of Hans E. Mertens, dated September 25, 2009.

Dated at Montpelier, Vermont, this 8<sup>th</sup> day of April, 2011.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: April 8, 2011

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*